IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.836 of 2006
With
Civil Application No.1310 of 2006

Jaywant Laxman Raut & ors. Appellants
Vs.
Ramesh Sukrya Thakur & ors. Respondents

Mr.Rajiv L. Patil with Ms. Madhavi Mhatre for appellants.
Mr.A.J.Joshi for resp.nos.1,3,4,7 and 9.
Mr.K.N.Kore for resp.nos.5 and 6.

CORAM: B.H.MARLAPALLE, J.

June 4, 2007.

P.C.

. Heard Mr.Patil, the learned counsel for the appellants who were the plaintiffs in Regular Civil Suit No.51 of 1996. The present respondents came to be impleaded as defendant nos.1 to 11. The suit property was Survey No.183, Hissa No.2 and totally admeasuring 16.9 Rs. located in village Mahim, Taluka Palghar, Dist. Thane. The suit was for declaration and partition of half share in the suit plot of land. It was also alleged that the defendants had put up a structure admeasuring 13 x 10 ft. in the open plot which was being used for access to the respective houses and the said construction was an encroachment. As per the plaintiffs themselves they were having their respective houses

i.e. houses bearing Village panchayat nos.1246 and 1247 in the suit plot of land. Similarly the defendants had two separate houses bearing Village panchayat nos.1248 and 1249. Along with the plaint a map of the suit property was also annexed.

. The main issue before the trial Court was regarding the purported half share of the plaintiffs in the suit property and the onus for the same squarely fell on the plaintiffs. They placed some documents on record at Exhibit 3/3 and 3/4 but they could not be relied on. In the cross-examination of the plaintiff no.1 (Exh. 29) it was admitted that the encroachment was done by Smt. Pramila Mahadeo Patil and Shri Purushottam Patil and none of them were impleaded as the defendants. There was no document on record placed by the plaintiffs in support of their case that they were the owners of half of the suit property. The defendants admitted in their evidence that the plaintiffs as well as their forefathers were staying in the houses i.e. house nos.1246 and 1247 but that admission does not lead to any conclusion to hold that the defendants had admitted joint ownership to the extent of half share in the suit property of the plaintiffs.

. The lower Appellate Court also examined the oral as well as documentary evidence and noted that the plaintiffs failed to prove that they had half share in the suit land. It is clear from the concurrent findings recorded by both the Courts below that the plaintiffs were unable to prove that they owned half of the suit property either by inheritance or by any other legal modes and the mere fact that they have respective houses in the suit plot was not by itself an evidence in support of their contentions that they were the owners of the half of the suit plot.

. Hence there is no substantial question of law that arises for consideration in the Second Appeal.

The appeal is dismissed in limine.

. Civil application does not survive and the same stands dismissed.

(B.H.MARL